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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE: APPLICATION OF JSC BTA
4 BANK

21 mc 824 (GHW) (GWG)

5 Remote Conference

6 -----x

7 New York, N.Y.
8 March 3, 2022
9 3:00 p.m.

10 Before:

11 HON. GREGORY H. WOODS,

12 District Judge

13 APPEARANCES

14 GREENBERG TRAURIG, LLP
15 Attorneys for JSC BTA BANK
16 BY: ASHLEY ANN-VINCENT LEBLANC

17 SOLOMON & CRAMER LLP
18 Attorneys for Intervenor Ilyas Khrapunov
19 BY: ANDREW TODD SOLOMON
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(The Court and all parties present remotely)

THE COURT: Let me begin by taking appearances from the parties. I'd like to ask the principal spokesperson for each set of parties to identify themselves as well as members of their team rather than having each lawyer introduce him or herself individually.

Let me begin with counsel for the petitioner. Who is on the line for petitioner?

MS. LEBLANC: Ashley LeBlanc from Greenberg Traurig. I believe I'm the only one on the line.

THE COURT: Thank you.

Who is on the line for intervenor?

MR. SOLOMON: Good afternoon, your Honor. Andrew Solomon for the intervenor, Ilyas Khrapunov.

THE COURT: Has anyone else dialed into the conference on behalf of any other interested person?

In particular, is counsel for any of the discovery targets on the line making an appearance in this proceeding?

Thank you. I'm hearing none. So let's begin.

What I'd like to do at the outset is just to make a few brief remarks about the rules that I would like you to follow during the call.

First, remember that this is a public proceeding. Any member of the public or press is welcome to join the call. I'm not monitoring whether third parties are currently auditing the

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1 call. So I'll ask you to keep that possibility in mind.

2 Second, please state your name each time that you
3 speak during the conference. That would be helpful for our
4 court reporter.

5 Third, please keep your lines on mute at all times
6 except when you are intentionally speaking to me or to one of
7 the other participants in the conference.

8 Fourth, I'm inviting our court reporter to let us know
9 if she has any difficulty hearing or understanding anything
10 that we have to say here today. If she asks you to do
11 something that would make it easier for her to do her job,
12 please do it to the extent that you can.

13 And finally, I'm ordering that there be no recording
14 or rebroadcast of all or any portion of today's proceeding.

15 Counsel, with that out of the way, I'd like to turn to
16 the substance of today's proceeding. I scheduled this
17 conference in order to address the objection to the order
18 issued by Magistrate Judge Gorenstein, which is pending at
19 Docket No. 17. I'm going to refer to that as the "order." I
20 also hope to address the motion to stay, which is currently
21 pending at Docket No. 19.

22 Counsel, I have reviewed all of the submissions in
23 connection with this application. In particular, Judge
24 Gorenstein's decision and the underlying documents with respect
25 to it. I have also obviously read your submissions in

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1 connection with the objections and the responses to the
2 objections to Judge Gorenstein's order. I think, as a result,
3 that I have a clear position regarding the parties'
4 positions -- I have a clear understanding, I should say --
5 regarding the parties' positions.

6 That said, if the parties would like to provide any
7 supplemental information to the Court in support of your
8 arguments beyond those that have already been provided in
9 writing, I'm happy to give you the opportunity to present those
10 now. If you would like to, please let me know. If you don't
11 want to, that's also fine, I will take up the motion on the
12 basis of the parties' written submissions if so.

13 Let me begin, first, with the objector, the
14 intervenor. Counsel, is there anything that you would like to
15 say about the application to the Court beyond what's already
16 been provided in your written submissions to the Court?

17 MR. SOLOMON: Your Honor, thank you for the
18 opportunity to address the motion. And I just have a few brief
19 comments that I'd like to offer.

20 First of all, I want to bring the Court up to date.
21 BTA served some of the subpoenas, not all of them. And on
22 February 18th, they received the first response from HSBC. And
23 HSBC produced certain bank records with respect to the Panolos
24 entity. Those bank records were first sent to me yesterday,
25 the day before this hearing.

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1 Now, I think that there's two problems I have with
2 that. First of all, I think it shows that BTA is not seeking
3 evidence for purposes of an adjudicative proceeding. BTA is
4 attempting to obtain post judgment discovery in order to try to
5 recover on its judgments, which is not the proper subject of a
6 1782 proceeding. And that's why they delayed, because counsel,
7 I assume, received the information, sent it to its client, BTA,
8 and then BTA, we have good knowledge to know, is working hand
9 in hand with the Kazakh regime. And they will digest and
10 analyze the information and make sure they can track down any
11 leads before we can do anything to stop them.

12 So that's the evidence, I think. That shows that this
13 is for collection. Because if it were for adjudication, there
14 would be no reason to not provide the information
15 contemporaneously, when it was received.

16 The other problematic aspect of it is I don't think
17 that BTA understands the nature of a 1782 proceeding. Because
18 if you read the statute, the 1782 proceeding contemplates the
19 appointment of somebody in the United States to receive
20 evidence and potentially testimony, so it could be testimony or
21 documents. And because this is not an ex parte proceeding, I
22 am supposed to be invited and present when those documents are
23 received.

24 Now, I understand in the world of subpoena compliance
25 with banks, banks will sometimes just send electronic

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1 documents. But I should have been notified of that
2 immediately, as if I were sitting in the room when the
3 documents were produced.

4 So I think there's a violation of 1782; the spirit and
5 the letter of 1782. I think this episode shows what is really
6 going on. And I'm asking the Court to look past the sort of
7 pretext that BTA is contemplating a legal proceeding.

8 What BTA is doing is trying to collect a judgment.
9 And they're trying to collect a judgment by trolling through
10 bank records of any entity that they can ever attach to my
11 client or Mr. Ablyasov in order to see if they can find a cause
12 of action. Which, again, is not appropriate for a 1782
13 petition.

14 So I think we have to look past what they're saying.
15 And as I mention in my papers -- I'm not going to repeat it --
16 they have not established an evidentiary basis establishing
17 that this is actually for use in an adjudicative proceeding in a
18 foreign country.

19 The other part of this is, we move for a stay. And I
20 understand the Court didn't grant the stay, but it put it over,
21 I think, for today. And the idea was to hold the status quo.
22 And the status quo has been now violated with respect to one
23 bank. No additional evidence should be disseminated to the
24 Kazakh regime until the objection and the stay is adjudicated.
25 Maybe that happens today and my concerns would then be moot.

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1 Finally, I just want to point out to your Honor that
2 if you read their papers, there's only one country that has
3 joined Kazakhstan wholeheartedly in their enforcement
4 proceedings against Mr. Khraponovs and Mr. Ablyasov, and that's
5 Russia. So we're not dealing with a Western democracy here.
6 We are dealing with a repressive regime, a regime that has
7 pulled no stops in terms of going after their enemies, the
8 enemies of the country, which is recently in revolution. And
9 part of their scheme and part of this repressive scheme is to
10 sue anybody with the name Khraponovs or Ablyasov anywhere in
11 the world, including multiple lawsuits in the United States.

12 And they haven't been successful in the United States,
13 your Honor. In fact, I think, importantly, they tried to get
14 recognition of their judgments and lost. They lost on
15 procedural grounds, but instead of going back and trying to get
16 the judgments recognized, which would then be a legitimate
17 basis for taking post judgment discovery, BTA has done this
18 end-around by using the 1782 proceeding.

19 So I think there's a lot of troublesome aspects of all
20 this. I don't think that Judge Gorenstein gave us a fair
21 shake. I think he knew that we had issues and there was no
22 emergency and didn't give us a chance to present our arguments
23 fully. And I think maybe if Judge Gorenstein had understood
24 the entire picture -- maybe -- I'm hoping that if he understood
25 the entire picture, even in his discretion, he would think

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1 twice of assisting BTA, which is a naturalized bank of
2 Kazakhstan in this campaign against my clients.

3 Thank you, your Honor.

4 THE COURT: Just a couple of brief questions before I
5 turn to the applicant.

6 First, I understand the thrust of your arguments to
7 the effect that requests are being made for the purpose of
8 supporting an enforcement proceeding, which is not covered, as
9 you argue, by 1782. The applicant has also pointed to legal
10 proceedings, which are not enforcement proceedings. How would
11 you have the Court take those affirmations? In other words, if
12 this is a potential hybrid use, in part, for ongoing legal
13 proceedings and part for enforcement proceedings; does that
14 mean that the request is improper?

15 MR. SOLOMON: Your Honor, I can't answer that
16 question, because there is no competent evidence about what's
17 really going on in the UK proceeding in the Khraponovs
18 proceeding and the contemplated proceeding.

19 So can I imagine a situation where an international
20 bank has a judgment and then is contemplating related
21 proceedings to that judgment that wouldn't count as collection,
22 I guess that's possible, yes. Because I think that 1782 has
23 been broadly and liberally provided for assistance to foreign
24 litigants. But I think we're dealing with a hypothetical
25 question here, because I don't believe that the Court or I have

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1 been presented with firsthand evidence of these foreign
2 proceedings and what's going on with these proceedings.

3 THE COURT: Thank you.

4 Let me ask a second question. I just want to ask you
5 to quickly expand on the way that the HSBC response has been
6 provided. Counsel, you described your position that the
7 information should be presented as if you were sitting in the
8 room as the documents are being produced.

9 What's the legal basis for that position? Is there a
10 particular portion of the statute to which you are referring?

11 MR. SOLOMON: Yes. I'm referring to the provision of
12 the statute -- I just want to get the text up on my screen so I
13 don't misspeak -- it says that "the testimony or statement be
14 given or the document or other thing be produced before a
15 person appointed by the Court," so that's in the text of 1782.
16 "The order may be made pursuant to a letter, rogatory issued or
17 request made by a foreign or international tribunal or upon
18 application of interested person and may direct that the
19 testimony or statement be given or the document or other thing
20 be produced before a person appointed by the Court." That's
21 the verbatim language of 1782.

22 And I think that that's consistent with whether you
23 call this an ex parte proceeding or whether you call this a
24 proceeding where somebody has been permitted to intervene.
25 Just as if there was a deposition, I would be there.

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1 THE COURT: Thank you.

2 Here, where we are talking about where the document or
3 the document or other thing be produced before a person
4 appointed by the Court, why can't that be the person that's
5 issued the subpoena?

6 MR. SOLOMON: I think it could be that person. But I
7 think I'm supposed to be there when it comes in.

8 THE COURT: Thank you.

9 What's the basis for that?

10 MR. SOLOMON: I am inferring it from the text of the
11 statute. I have not, candidly, done additional research on
12 this point. But I think that that's by the nature of whether
13 it's ex parte or whether it's not ex parte, which this is not.
14 If it was a deposition, there would be no question, right, that
15 I would be there. So I don't know why the production of
16 documents should be any different.

17 THE COURT: Thank you. Understood.

18 Let me turn to counsel for the petitioner. Counsel,
19 is there anything you would like to say about your application
20 generally or in response to the arguments that have been
21 highlighted here by intervenor?

22 MS. LEBLANC: Yes. Thank you, your Honor, for the
23 opportunity to respond and also via written papers. We
24 appreciate that opportunity.

25 So I believe that our submission and the order are

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1 thorough in their analysis and that the order can be confirmed
2 that there's no clear error present there to support. The
3 magistrate looked at all the relevant law, all of the relevant
4 factors and applied it appropriately. And I think that's
5 evident in our papers.

6 As to the HSBC production -- just to clarify the
7 record on that -- I understand that the production is dated, I
8 believe it's February 18th, it was provided to us via email,
9 password protected email, which actually got pushed into our
10 quarantine, our firm's quarantine. And so we weren't aware
11 that we had received the documents until last week on Thursday,
12 February 24th. And we provided it to counsel within a week of
13 our realizing that it had been pushed into that quarantine
14 pool, which I think is a reasonable time.

15 As to the statutory basis Mr. Solomon points out for
16 providing it, I would want to investigate that further, in
17 terms of it requiring a more contemporaneous production to
18 Mr. Solomon. In my view, we were providing it as courtesy,
19 since there is no requirement under the federal rules or local
20 rules to provide the information. And I believe we provided it
21 timely in any event.

22 But if there is something, some basis for us providing
23 it at a different point in time, sooner within a week or as
24 soon as we realize we have it or whatever that is, we're
25 certainly happy to follow the Court's guidance, in terms of our

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1 obligations to provide that information if that differs from
2 our practice with the HSBC documents.

3 THE COURT: Thank you.

4 Any comments regarding my question regarding, I'll
5 call it, a potential hybrid use of information requested in a
6 1782 proceeding? My understanding is that counsel for the
7 intervenor concedes that that is legally feasible, but points
8 to the objection based on asserted lack of personal knowledge
9 of the status of the foreign proceedings. What would you like
10 to say in response?

11 MS. LEBLANC: Thank you so much. I was just pausing
12 to collect my thoughts on that point.

13 So as to that point, as it relates to a judgment
14 enforcement proceeding -- and I believe it's cited in the
15 order -- there's case law in the Second Circuit that such use
16 is permissible. So from our perspective, as a matter of law,
17 our use of information for that purpose is within the bounds of
18 the 1782 use. So we don't really see that as a bar in any
19 event.

20 I believe that answers your question as to that, but
21 correct me if I'm missing something, some aspect of your
22 question.

23 THE COURT: Thank you. That's fine, counsel.

24 Anything else?

25 MS. LEBLANC: Yes. The last point I'd like to make is

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1 just to state that I -- sorry, there was another point to your
2 question, which was the evidentiary basis.

3 And I just wanted to point out that the evidentiary
4 basis, which is largely based on court records and public
5 records, the Court could easily, just as easily take judicial
6 notice of. So I believe that the intervenor's objections on
7 that basis are unfounded.

8 Then, lastly, I just would ask the Court to disregard
9 Mr. Solomon's appeal to ethos and his reference to Russia and
10 these repressive schemes. Those points are just entirely
11 irrelevant to the legal matters at hand before the Court.

12 With that, I'll complete.

13 THE COURT: Thank you.

14 Just briefly, counsel, what are you referring to when
15 you say judicial notice? What is it that you ask me to take
16 judicial notice of? My understanding is that you believe that
17 the affidavit was adequate to provide the Court with
18 information about the legal matters described.

19 MS. LEBLANC: That's correct. We do believe that it
20 is adequate.

21 The comment was merely to point out that should the
22 Court in any way find it inadequate that there is another basis
23 on which the Court could rely on the materials.

24 THE COURT: Thank you. I'm not sure about that. But
25 I think I have heard enough.

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1 I will ask the parties to bear with me for a few
2 moments. What I'd like to do is to rule on the decision now.
3 If you can place your phones on mute, I'll provide you with my
4 analysis. And then I will make a couple of brief comments at
5 the end about the couple of issues that came up during our
6 conversation here. But if you can, please bear with me as I
7 rule on the pending objection and the motion to stay.

8 Opinion: On December 16, 2021, Judge Gorenstein
9 entered the Order, which granted Intervenor Ilyas Khrapunov's
10 motion to intervene, but also granted Applicant JSC BTA Bank's
11 application for discovery for use in a foreign proceeding under
12 28 U.S.C. §1782 (the "Application"). In doing so, Judge
13 Gorenstein authorized Petitioner to issue and serve various
14 subpoena duces tecum on the Clearing House Payment Company LLC
15 ("Clearing House"), as well as 13 banks (the "Banks" and,
16 together with Clearing House, the "Discovery Targets"). Docket
17 No. 16. Intervenor filed his objection to the Order on
18 January 6, 2021. Docket No. 17 ("Objection"). Then, on
19 January 24, 2022, Intervenor requested that the Court stay
20 discovery pending the Court's ruling on his Objection. Docket
21 No. 18. Petitioner filed a response to the Objection on
22 February 3, 2022. Docket No. 21 ("Response"). Intervenor
23 filed a reply on February 8, 2022 ("Reply").

24 I am prepared to rule on Intervenor's objection. I
25 will do so orally. Because the parties are familiar with the

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1 underlying facts and procedural history, I will not address
2 those separately. The facts that are relevant to my decision
3 are embedded in my analysis.

4 A. Legal Standard:

5 An objection directed at a nondispositive matter
6 decided by the assigned magistrate judge will not be "modified"
7 or "set aside" unless the magistrate judge's ruling is "clearly
8 erroneous or is contrary to law." Fed. R. Civ. P. 72(a).
9 "[M]agistrate judges are afforded broad discretion in resolving
10 nondispositive disputes and reversal is appropriate only if
11 their discretion is abused." *Williams v. Rosenblatt*
12 *Securities, Inc.*, 236 F. Supp. 3d 802, 803 (S.D.N.Y. 2017)
13 (citing *Thai Lao Lignite (Thailand) Co., Ltd. v. Gov't of Lao*
14 *People's Democratic Republic*, 924 F. Supp. 2d 508, 511
15 (S.D.N.Y. 2013)). "A magistrate's ruling is contrary to law if
16 it 'fail[s] to apply or misapplies relevant statutes, case law,
17 or rules of procedure.'" *Thai Lao Lignite*, 924 F. Supp. 2d at
18 512 (quoting *Moore v. Publicis Groupe*, 2012 WL 1446534, at *1
19 (S.D.N.Y. Apr. 26, 2012)). A magistrate judge's order is
20 clearly erroneous where "'on the entire evidence,' [the
21 district court] is 'left with the definite and firm conviction
22 that a mistake has been committed.'" *Easley v. Cromartie*, 532
23 U.S. 234, 242 (2001) (quoting *United States v. United States*
24 *Gypsum Co.*, 333 U.S. 364, 395 (1948)). "The party seeking to
25 overturn a magistrate judge's decision thus carries a heavy

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burden." *McFarlane v. First Unum Life Ins. Co.*, 2017 WL 4564928, at *2 (S.D.N.Y. Oct. 12, 2017) (quoting *State Farm Mut. Auto. Ins. Co. v. Fayda*, 2016 WL 4530890, at *1 (S.D.N.Y. Mar. 24, 2016)).

"A Section 1782 application is nondispositive and may be decided by a magistrate judge by opinion and order, rather than a report and recommendation to the district court." *In re Atvos Agroindustrial Investimentos S.A.*, 481 F. Supp. 3d 166, 174-75 (S.D.N.Y. 2020); see also *In re Hulley Enterprises Ltd.*, 400 F. Supp. 3d 62, 71 (S.D.N.Y. 2019) (Daniels, J.) ("This Court agrees with the majority of courts finding that rulings on §1782 applications are not dispositive." Accordingly, the Court will review the Order to determine if it is clearly erroneous or contrary to law.

B. Objections Regarding the Motion to Intervene:

Judge Gorenstein's grant of the Application under 28 U.S.C. §1782 was not clearly erroneous or contrary to law.

i. Legal Standard:

In ruling on an application for discovery under 28 U.S.C. §1782, "a district court must first consider [§1782's] statutory requirements and then use its discretion in balancing a number of factors." *Brandi-Dohrn v. IKB Deutsche Industriebank AG*, 673 F.3d 76, 80 (2d Cir. 2012).

There are three statutory requirements for granting an application pursuant to §1782. A Court may grant a request

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1 when: "(1) the person from whom discovery is sought resides
2 (or is found) in the district of the district court to which
3 the application is made, (2) the discovery is for use in a
4 foreign proceeding before a foreign tribunal, and (3) the
5 application is made by a foreign or international tribunal or
6 any interested person." *Id.*; see also *Mangouras v. Squire*
7 *Patton Boggs*, 980 F.3d 88, 97 (2d Cir. 2020) (stating same
8 requirements). "All three statutory factors must be met in
9 order for a district court to have the authority to grant a
10 §1782 request." *In re Al-Attabi*, 2022 WL 229784, at *1
11 (S.D.N.Y. Jan. 26, 2022).

12 If an application satisfies the statutory factors, a
13 court must exercise its discretion, guided by the "twin aims of
14 the statute," namely, "providing efficient means of assistance
15 to participants in international litigation in our federal
16 courts and encouraging foreign countries by example to provide
17 similar means of assistance to our courts." *Schmitz v.*
18 *Bernstein Liebhard & Lifshitz, LLP*, 376 F.3d 79, 84 (2d Cir.
19 2004) (quotation marks and citations omitted); accord
20 *Brandi-Dohrn*, 673 F.3d at 81. "[C]ourts have wide discretion to
21 determine whether to grant discovery and can tailor any
22 requested discovery 'to avoid attendant problems.'" *In re*
23 *Postalis*, 2018 WL 6725406, at *2 (S.D.N.Y. Dec. 20, 2018)
24 (quoting *Application of Esses*, 101 F.3d 873, 876 (2d Cir.
25 1996)). To aid the court in determining whether to exercise

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1 its discretion to grant discovery pursuant to §1782, the
2 Supreme Court has prescribed four factors to consider. See
3 *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241,
4 264-65, 124 S. Ct. 2466, 2483-84 (2004).

5 The four "*Intel* factors" are: (1) whether the person
6 from whom discovery is sought is a participant in the foreign
7 proceeding, in which event the need for §1782(a) aid generally
8 is not as apparent as it ordinarily is when evidence is sought
9 from a nonparticipant in the matter arising abroad; (2) the
10 nature of the foreign tribunal, the character of the
11 proceedings underway abroad and the receptivity of the foreign
12 government or the court or agency abroad to U.S. federal court
13 judicial assistance; (3) whether the request conceals an
14 attempt to circumvent foreign proof-gathering restrictions or
15 other policies of a foreign country or the United States; and
16 (4) whether the request is unduly intrusive or burdensome.

17 *Kiobel by Samkalden v. Cravath, Swaine & Moore LLP*, 895 F.3d
18 238, 244 (2d Cir. 2018) (citing *Intel*, 542 U.S. at 264-65, 124
19 S. Ct. 2483-84). If a §1782 petition satisfies both the
20 statutory requirements and the discretionary *Intel* factors, a
21 district court may grant the petition.

22 The burden of establishing entitlement to discovery
23 pursuant to §1782 falls on the applicant. See *In re Gorsoan*
24 *Limited*, 843 F. App'x 352, 354 (2d Cir. 2021) (party seeking to
25 invoke §1782 must show the three statutory factors are met); *In*

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1 *re Postalis*, 2018 WL 6725406, at *3 (applicant must show the
2 basic statutory requirements).

3 ii. Analysis:

4 One, Judge Gorenstein did not clearly err in
5 determining that the Targets were "found in" the Southern
6 District of New York.

7 Intervenor first argues that Judge Gorenstein
8 committed clear error because Applicant did not demonstrate
9 that the Discovery Targets were "found in" New York. Judge
10 Gorenstein did not clearly err in making that determination.

11 §1782 does not define what it means to 'reside' or be
12 'found' in a particular district, and '[i]t is unclear whether
13 [Section] 1782's statutory prerequisite that a person or entity
14 reside or be found in a district is coextensive with whether a
15 court has personal jurisdiction over that person or entity.'"
16 *In re Del Valle Ruiz*, 2018 WL 5095672, at *3 (S.D.N.Y. Oct. 19,
17 2018) (quoting *In re Sargeant*, 278 F. Supp. 3d 814, 820
18 (S.D.N.Y. 2017)). "However, several courts within this District
19 have recognized that, "[a]t minimum... compelling an entity to
20 provide discovery under §1782 must comport with constitutional
21 due process." *Id.*

22 District courts "resolving issues of personal
23 jurisdiction must... engage in a two-part analysis." *Bank*
24 *Brussels Lambert v. Fiddler Gonzalez & Rodriguez*, 171 F.3d 779,
25 784 (2d Cir. 1999). "First, they must determine whether there

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1 is jurisdiction over the defendant under the relevant forum
2 state's laws... second, they must determine whether an exercise
3 of jurisdiction under these laws is consistent with federal due
4 process requirements." Id. Once a statutory basis for
5 personal jurisdiction is established, "due process requires a
6 plaintiff to allege (1) that a defendant has 'certain minimum
7 contacts' with the relevant forum, and (2) that the exercise of
8 jurisdiction is reasonable in the circumstances." *In re*
9 *Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir.
10 2013) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316
11 (1945)).

12 To determine whether a defendant has the necessary
13 "minimum contacts," a distinction is made between "specific"
14 and "general" personal jurisdiction. "Specific [personal]
15 jurisdiction exists when 'a [forum] exercises personal
16 jurisdiction over a defendant in a suit arising out of or
17 related to the defendant's contacts with the forum'; a court's
18 general jurisdiction, on the other hand, is based on the
19 defendant's general business contacts with the forum... and
20 permits a court to exercise its power in a case where the
21 subject matter of the suit is unrelated to those contacts."
22 Id. The existence of either specific personal jurisdiction or
23 general personal jurisdiction satisfies the "minimum" contacts
24 requirement of the due process clause. Id. at 673-74
25 (citations omitted).

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1 "For the purpose of establishing specific personal
2 jurisdiction, the necessary 'fair warning' requirement is
3 satisfied if the defendant has 'purposefully directed' his
4 activities at residents of the forum and the litigation results
5 from alleged injuries that 'arise out of or relate to' those
6 activities." Id. at 674 (quoting *Burger King Corp. v.*
7 *Rudzewicz*, 471 U.S. 462, 472-73 (1985) (quoting *Keeton v.*
8 *Hustler Magazine, Inc.*, 465 U.S. 770, 774 (1984), and
9 *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S.
10 480, 414 (1984))).

11 "Unlike specific personal jurisdiction, general
12 jurisdiction is not related to the events giving rise to the
13 suit." Id. To establish general jurisdiction, a plaintiff
14 must "demonstrate the defendant's 'continuous and systematic
15 general business contacts' with the forum at the time the
16 initial complaint was filed." Id. (quoting *Helicopteros*
17 *Nacionales de Colombia, S.A.*, 466 U.S. at 414-16 & n.9). "For
18 an individual, the paradigm forum for the exercise of general
19 jurisdiction is the individual's domicile; for a corporation,
20 it is an equivalent place, one in which the corporation is
21 fairly regarded as at home." *Goodyear Dunlop Tires Operations,*
22 *S.A. v. Brown*, 564 U.S. 915, 922 (2011).

23 In *Daimler AG v. Bauman*, the Supreme Court clarified
24 that, with respect to foreign corporations (i.e., "legal"
25 persons), the touchstone of general personal jurisdiction is

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1 "whether that corporation's 'affiliations with the State are so
2 'continuous and systematic" as to render [it] essentially at
3 home in the forum,'" 571 U.S. 117, 138 n.18, 134 S.Ct. 746, 187
4 L.Ed.2d 624 (2014 (quoting *Goodyear Dunlop Tires Operations,*
5 *S.A. v. Brown*, 564 U.S. 915, 919, 131 S.Ct. 2846, 180 L.Ed.2d
6 796 (2011)). The Supreme Court explained that a corporation's
7 place of incorporation and principal place of business are
8 "paradig[m]... bases for general jurisdiction." *Id.* at 137,
9 134 S.Ct. 746 (alterations in original). Moreover, while the
10 Court cautioned that it was not "foreclos[ing] the possibility
11 that in an exceptional case... a corporation's operations in a
12 forum other than its formal place of incorporation or principal
13 place of business may be so substantial and of such a nature as
14 to render the corporation essentially at home in the State."
15 *Id.* at 139, 134 S.Ct. 746 n.19.

16 In *Gucci America, Inc. v. Weixing Li*, the Second
17 Circuit applied those standards to determine that general
18 personal jurisdiction could not be exercised over a bank that
19 was headquartered in China but had branches in New York. 768
20 F.3d 122, 135 (2d Cir. 2014). The Circuit stated that "the
21 test for specific jurisdiction over defendants examines whether
22 a cause of action arises out of or relates to the defendant's
23 contacts with the forum," and determined that the existence of
24 a bank branch in New York was insufficient grounds for general
25 personal jurisdiction. *Id.* at 141-142.

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1 However, the New York Appellate Division has held that
2 courts may exert general jurisdiction over the specific bank
3 branch located in the New York. *B & M Kingstone, LLC v. Mega*
4 *Int'l Com. Bank Co. ("B&M")*, 15 N.Y.S.3d 318, 324 (1st Dep't
5 2015) ("[T]he court's general personal jurisdiction over the
6 bank's New York branch permits it to compel that branch to
7 produce any requested information that can be found through
8 electronic searches performed there."); see also *Sonterra Cap.*
9 *Master Fund Ltd. v. Credit Suisse Grp. AG*, 277 F. Supp. 3d 521,
10 587 (S.D.N.Y. 2017) (quoting *B&M* for the same).

11 Here, Judge Gorenstein determined that the Targets
12 were found in the Southern District of New York, noting that
13 "BTA has provided evidence that each respondent bank maintains
14 an office (in many cases, its corporate headquarters) and does
15 business (including correspondent and intermediary banking) in
16 the Southern District of New York." Order at 3. The parties
17 do not dispute that the Court has personal jurisdiction over
18 the Discovery Targets headquartered in New York. Indeed, the
19 intervenor appears to concede that the Court has general
20 jurisdiction over the Discovery Targets that are headquartered
21 in the Southern District of New York, which consist of The
22 Clearing House, The Bank of New York Mellon, BNP Paribas,
23 Citibank, N.A., Deutsche Bank Trust Company Americas, HSBC Bank
24 of USA, N.A., and JPMorgan Chase Bank, N.A. Objection at 8.

25 For the remainder of the Discovery Targets, the

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1 Applicant does not dispute that discovery may only be compelled
2 from the individual bank branches located in New York and not
3 from others of the banks' locations. See opposition at 5; see
4 also *B&M*, 15 N.Y.S. at 324 (personal jurisdiction is proper
5 over bank branches in New York). Accordingly, Judge Gorenstein
6 did not clearly err in determining the bank branches in this
7 district were "found in" this district.

8 The parties also squabble over whether intervenor may
9 assert a lack of personal jurisdiction on behalf of the
10 third-party banks. But because there is no dispute that
11 personal jurisdiction has been established for the Targets that
12 are headquartered in the Southern District of New York and the
13 bank branches located in that district, the Court need not
14 decide that issue here.

15 Two, Judge Gorenstein did not clearly err in
16 determining that the Subpoenaed Evidence was "for use" in a
17 foreign adjudicative proceeding.

18 Intervenor next objects to the Order asserting that
19 Applicant failed to establish that the subpoenaed evidence was
20 "for use" in a foreign proceeding. That was not clearly
21 erroneous.

22 The "for use" factor in §1782 has been construed
23 broadly, requiring neither that the discovery sought would be
24 discoverable by the foreign tribunal, nor that the discovery be
25 admissible in the foreign proceeding. *Brandi-Dohrn v. IKB*

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1 *Deutsche Industriebank AG*, 673 F.3d 76, 82 (2d Cir. 2012)
2 ("[A]s a district court should not consider the discoverability
3 of the evidence in the foreign proceeding, it should not
4 consider the admissibility of evidence in the foreign
5 proceeding in ruling on a §1782 application."); see also *Intel*,
6 542 U.S. at 259-60 (rejecting the proposition that §1782
7 "bar[s] a district court from ordering production of documents
8 when the foreign tribunal or the 'interested person' would not
9 be able to obtain the documents if they were located in the
10 foreign jurisdiction").

11 Establishing that the discovery will be "for use" in a
12 foreign proceeding requires "that §1782 applicants show that
13 the evidence sought is 'something that will be employed with
14 some advantage or serve some use in the proceeding.'" *Certain*
15 *Funds, Accts. &/or Inv. Vehicles v. KPMG, L.L.P.*, 798 F.3d 113,
16 120 (2d Cir. 2015) (quoting *Mees v. Buiter*, 793 F.3d 291, 297
17 (2d Cir. 2015)). "The key question... is not simply whether
18 the information sought is relevant, but whether the Funds will
19 actually be able to use the information in the proceeding."
20 *Id.*

21 Here, Judge Gorenstein determined that "the requested
22 discovery is for use in civil proceedings in at least one
23 foreign tribunal: Namely, the High Court of England and
24 Wales." Order at 3. Judge Gorenstein ostensibly referred to a
25 case currently pending in English High Court, which was stayed

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1 in September 2019. Docket No. 5 ("Kislin Decl.") Paragraph 35.
2 And that case was stayed after Applicant obtained a partial
3 judgment against Intervenor and Intervenor's father-in-law for
4 breach of court orders relating to the disclosure of his and
5 his father-in-law's assets. Id. Paragraph 34. Applicant
6 avers that it will use the discovery being sought to "lift the
7 stay in order to add additional defendants" to the proceedings
8 and "amend the relevant freezing order to ensure that assets,
9 once located, do not disappear before judgment is rendered."
10 Id. Paragraph 35.

11 Judge Gorenstein did not clearly err in determining
12 that the use identified by Applicant is sufficient to establish
13 the "for use" element of a §1782 application. Here, as Judge
14 Gorenstein pointed out, using the discovery to "add additional
15 defendants" and to "amend the relevant freezing order to ensure
16 that assets, once located, do not disappear before judgment is
17 rendered." See Order at 3. There is no clear error in a
18 determination that the addition of defendants and the amendment
19 of a freezing order to protect Applicant's assets would provide
20 "some advantage" in those foreign proceedings.

21 To the extent Intervenor contends that the Application
22 should be denied because the discovery sought may be used in
23 non-adjudicative proceedings other than the proceedings in the
24 High Court of England and Wales -- or even there -- that
25 contention fails. The Second Circuit has expressly rejected

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1 the argument that a petitioner must satisfy the statutory
2 requirements for each foreign proceeding in which he or she
3 wished to use the requested discovery. See *In re Accent*
4 *Delight Int'l Ltd.*, 869 F.3d 121, 134 (2d Cir. 2017); see also,
5 *In re Accent Delight Int'l Ltd.*, 2018 WL 2849724, at *3
6 (S.D.N.Y. June 11, 2018), *aff'd*, 791 F. App'x 247 (2d Cir.
7 2019) ("In any event, the Court need not decide whether
8 Petitioners meet the statutory factors for the Swiss
9 proceedings because the Second Circuit and this Court have held
10 that Section 1782 does not require an applicant to 'satisfy the
11 statutory requirements for each foreign proceeding for which he
12 or she wishes to use the requested discovery'") (quoting *In re*
13 *Accent Delight Int'l Ltd.*, 869 F.3d at 134).

14 Intervenor's argument that Judge Gorenstein clearly
15 erred because Applicant should have obtained an affidavit from
16 a foreign attorney, rather than Applicant's U.S.-based counsel,
17 in support of Applicant's intended use of the discovery is
18 entirely unsupported. Intervenor does not identify any legal
19 requirement that a foreign attorney provide support for a 1782
20 application -- Intervenor points only to cases in which a
21 foreign attorney happened to support the §1782 application.
22 See Objection at 12. Nor does Intervenor point to any
23 competent reason as to why Applicant's U.S. counsel would be
24 unaware of the intended use of the documents in foreign
25 proceedings. The Court finds no clear error in Judge

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1 Gorenstein's reliance on U.S. counsel's declaration to
2 establish the intended use for documents in foreign
3 proceedings. Accordingly, Intervenor's objection is dismissed
4 to the extent Intervenor objects to Judge Gorenstein's
5 conclusion that the discovery sought is "for use" in a foreign
6 proceeding.

7 Three, Judge Gorenstein did not abuse his discretion
8 in weighing the *Intel* discretionary factors.

9 Intervenor next argues that Judge Gorenstein clearly
10 erred in his discretionary analysis of the *Intel* factors, but
11 those arguments are not persuasive. First, Intervenor asserts
12 that Judge Gorenstein should have denied the Application
13 because Applicant put forth insufficient evidence that any
14 transactions passed through the Discovery Targets. Objection
15 at 13. That argument would ostensibly fall under the fourth
16 *Intel* factor -- whether the request is unduly intrusive or
17 burdensome. However, Applicant identified specific
18 transactions that could have passed through the Discovery
19 Targets, noting that individuals involved in the fraudulent
20 scheme at the heart of the foreign proceedings had a
21 "propensity... to effect US dollar denominated transactions."
22 Kislin Decl. 50. Judge Gorenstein did not clearly err in
23 determining that the Banks and the Clearing House were
24 appropriate targets for discovery on that basis.

25 In arguing to the contrary, Intervenor relies on *In re*

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1 *Asia Maritime Pacific Ltd.*, where a court in this district
2 denied a §1782 application. 253 F. Supp. 3d 701, 705 (S.D.N.Y.
3 2015). There, the Court denied the application on the basis
4 that the petitioner had failed to identify any adjudicative
5 foreign proceedings, and also commented, in dicta, that even if
6 the statutory §1782 requirements had been met, it would not
7 have exercised its discretion to permit discovery because the
8 petitioner had provided "no basis to believe that [a company in
9 question] ever transacted business through any particular
10 bank." *Id.* at 705.

11 That case can be distinguished. First, the Court's
12 determination was based on the fact that plaintiff had not
13 identified any foreign proceedings in which the discovery would
14 be used -- its commentary on whether plaintiff had sufficiently
15 identified a basis to believe that a company had transacted
16 business with a particular bank was an ancillary finding.
17 Moreover, in that case, the applicant sought discovery to
18 "identify the location of bank accounts and other assets" in
19 order to "support claims on the merits" in proceedings that had
20 yet to be initiated. *Id.* at 703. In this case, by contrast,
21 Applicant has identified specific fraudulent transactions and
22 has also stated that participants in the schemes underlying the
23 foreign proceedings had a tendency to transact through American
24 banks. Judge Gorenstein did not clearly err in exercising his
25 discretion to grant the Application.

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1 I also briefly note that Applicant averred that its
2 requests were limited to bank payment messages naming or
3 referencing only three terms. *Id.* 59. That limited search
4 also supports Judge Gorenstein's determination that the
5 discovery sought was not unduly burdensome.

6 Next, Intervenor argues that Applicant's request
7 "appears to be an attempt to circumvent bank secrecy rules in
8 Europe." *Id.* Intervenor's argument is not well supported. He
9 claims only that Applicant "does not explain" why Applicant is
10 targeting U.S. banks instead of the principal banks in Europe.
11 But "nothing in the text of §1782 limits a district court's
12 production order authority to materials that could be
13 discovered in the foreign jurisdiction if the materials were
14 located there." *Intel Corp.*, 542 U.S. at 260. Nor does
15 Intervenor identify any bank secrecy rules that Applicant would
16 allegedly circumvent were the Application granted.
17 Accordingly, Judge Gorenstein did not clearly err in exercising
18 his discretion to grant the Application.

19 For these reasons, Intervenor's objections to Judge
20 Gorenstein's order are overruled. Moreover, Intervenor's
21 request for a stay pending the Court's decision on the
22 Objection is denied at this point as moot.

23 Just a few brief comments, counsel, before we end.
24 First off, I described the procedural context in which this
25 objection finds me. This is not de novo review. The standard

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1 of review is that which I have described earlier. So I am not
2 taking any position regarding, I'll call it, the process that
3 was used here. I understand that the intervenor would have
4 liked to have had more opportunity to participate in the
5 proceedings below. I don't take that up here. I appreciate
6 the comment, but it's not an issue that's before me here, in
7 particular, given the broad discretion afforded to the
8 magistrate judge in this context.

9 Second, note that I'm not commenting on the counsel
10 for applicant described as ethos -- I think it might have been
11 pathos -- which is the reference to the nature of the regime
12 and Kazakhstan and a timely reference to events in Russia. I'm
13 not commenting on that for two reasons:

14 One, I'm reviewing Magistrate Judge Gorenstein's
15 determination regarding the discretionary *Intel* factors. I am
16 not, again, making that assessment myself de novo now, the
17 principal reason why I'm not commenting on that at this point.
18 Secondarily, I'm applying the statute as it currently exists.
19 But the principal point is that I'm not making a de novo
20 evaluation of the *Intel* factors here.

21 An issue was raised by counsel for the Intervenor
22 regarding, I'll call it, the time by which productions must be
23 shared with intervenor. That issue is not properly before me
24 at this point for resolution. That issue would fall within the
25 scope of the order of reference to Judge Gorenstein. And so to

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1 the extent there's an issue or concern regarding the timing of
2 the applicant's provision of any responsive materials to the
3 intervenor, that issue should be taken up with Judge Gorenstein
4 in the first instance with, of course, the opportunity for the
5 parties to bring any issue to me pursuant to Rule 72, if it
6 needs review, if a decision is such that a review is
7 appropriate. But I'm not going to take up that issue in the
8 first instance because it falls within the scope of my order of
9 reference to Judge Gorenstein.

10 I'm going to issue a brief order denying the
11 objections and pointing to the transcript of today's proceeding
12 for the rationale of my decision.

13 Again, to the extent that there are other collateral
14 issues that the parties would like to raise regarding the case,
15 they should be properly brought to Judge Gorenstein in the
16 first instance.

17 Anything else for us to take up here? First, counsel
18 for petitioner or applicant.

19 MS. LEBLANC: No. Thank you very much for your time
20 and consideration on the matter.

21 THE COURT: Thank you.

22 Counsel for intervenor.

23 MR. SOLOMON: Yes, your Honor.

24 Would your Honor consider staying the subpoenas or
25 ordering the Greenberg Traurig firm not to disseminate any

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1 discovery that they receive for 30 days so that we have an
2 opportunity to appeal this ruling to the Second Circuit?

3 THE COURT: No.

4 You can make any application that you think is
5 appropriate, but I just denied the application for the reasons
6 described. At this point, I don't see a need. But you can
7 take up any application that you would like.

8 If you would like to make a further application to the
9 Court with written, I'll call it, support, I'm happy to
10 consider it. But at this point, having considered the
11 application, I don't think I have a sufficient basis to stay
12 this pending any potential appellate review. Again, you should
13 feel free to make any application to me or to the Court in
14 writing, because all I have heard at this point is just the
15 bare nature of the request. I don't know what the asserted
16 error is.

17 Thank you all very much. This proceeding is
18 adjourned.

19 (Adjourned)
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